

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Evergreen Nursery,

Complainant,

vs.

North San Diego County Transit District,

Defendant.

Case 05-10-008
(Filed October 11, 2005)**ORDER DISMISSING THE COMPLAINT****Background**

This complaint involves a request by Evergreen Nursery to preserve a private crossing of the tracks to be used by the North San Diego County Transit District (Transit District) for its Sprinter service. After the initial prehearing conference, the parties agreed to participate in a mediation of the substantive issues involved in the proceeding. At the request of the parties, Administrative Law Judge (ALJ) Kenneth Koss was assigned to serve as mediator.

The Assigned Commissioner Dian M. Grueneich issued a scoping ruling setting a schedule for the proceeding in the event that the parties were unable to reach a settlement. The schedule called for parties to distribute direct testimony on April 28, 2006 and rebuttal testimony on May 5, 2006. The Commission set evidentiary hearings for May 18, 2006, with posthearing briefing ended by June 16, 2006.

Twice, the parties sought and received delays in the schedule from assigned ALJ Steven Weissman in order to continue settlement efforts. ALJ Weissman held a second prehearing conference on May 18, 2006, to determine the likelihood of settlement and to explain the steps that the parties would have to take to resolve the proceeding in the event that an agreement was reached. Subsequently, ALJ Koss informed ALJ Weissman that the parties had reached an agreement and would file additional pleadings to that effect. The Commission has not heard further from the parties since the second prehearing conference. The parties have met none of the deadlines and have offered no testimony or further pleadings. Therefore, no evidentiary hearing was held.

In the absence of response from the parties, the complaint will be dismissed without prejudice.

Reduction of Comment Period

In light of all the circumstances of this complaint, we deem it necessary to resolve the uncertainty regarding the status of this crossing as soon as possible. Therefore, pursuant to Rule 14.6 of the Commission's Rules of Practice and Procedure, comments on the proposed decision must be filed within 14 days of its mailing and no reply comments will be accepted. The complainant filed comments on September 28, 2006.

Assignment of Proceeding

The Assigned Commissioner is Dian M. Grueneich, and the assigned ALJ is Steven Weissman who served as the presiding officer.

Finding of Fact

The parties have failed to pursue resolution of this complaint, and have failed to meet the established deadlines for distributing testimony.

Conclusion of Law

This complaint should be dismissed.

IT IS ORDERED that:

1. The complaint is dismissed without prejudice.
2. No evidentiary hearings are necessary.
3. Case 05-10-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.